CANADA'S SYSTEM OF JUSTICE

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Foreword

There are many laws that affect Canadians every day. Everyone knows that there are laws against crimes, such as robbery or murder. There are also laws that apply to us when we do quite ordinary things like driving a car, renting an apartment, getting a job or getting married. In fact, there are laws concerning almost every aspect of our daily life.

Many people believe that this complex set of laws is too difficult to understand, or that it is a mystery to be unravelled only by lawyers. While it is true that the precise details of law can be quite complicated, the general principles of law in Canada are not that far removed from ordinary common sense. If you want to know how the law applies to a specific problem, you may be wise to consult a lawyer. But there are more basic questions which concern every Canadian. What is the "law"? What is it for? Where does it come from? How does it operate?

This booklet doesn't try to give exhaustive answers to these questions. Rather, it provides a brief outline of Canada's system of law and justice, in an attempt to remove some of the mystery and stimulate further thought and discussion. In Canada, the citizens are ultimately responsible for answering these questions; as members of society we must decide what our laws will be like. When making such decisions it is important to understand the basic principles of our legal heritage.

It is also important for individual Canadians to understand how the law seeks to balance fairly the entitlements and obligations that people share as members of society. For example, the law, by recognizing one person's legal right, may impose a legal duty upon another. It is the overall apportionment of rights, duties, privileges and powers that makes up our legal system.

It will be obvious in this booklet that our system of justice can function well only if people understand what their legal rights and responsibilities are. This may mean serving on a jury, even though it might be inconvenient. It might also mean that you can be called as a witness in a trial. Above all, citizens in a democratic society have a duty to learn as much as they can about the laws which affect our everyday life and about how the system of justice works. That is one of the purposes of this booklet.

What is the "Law"?

Why do we need the Law?

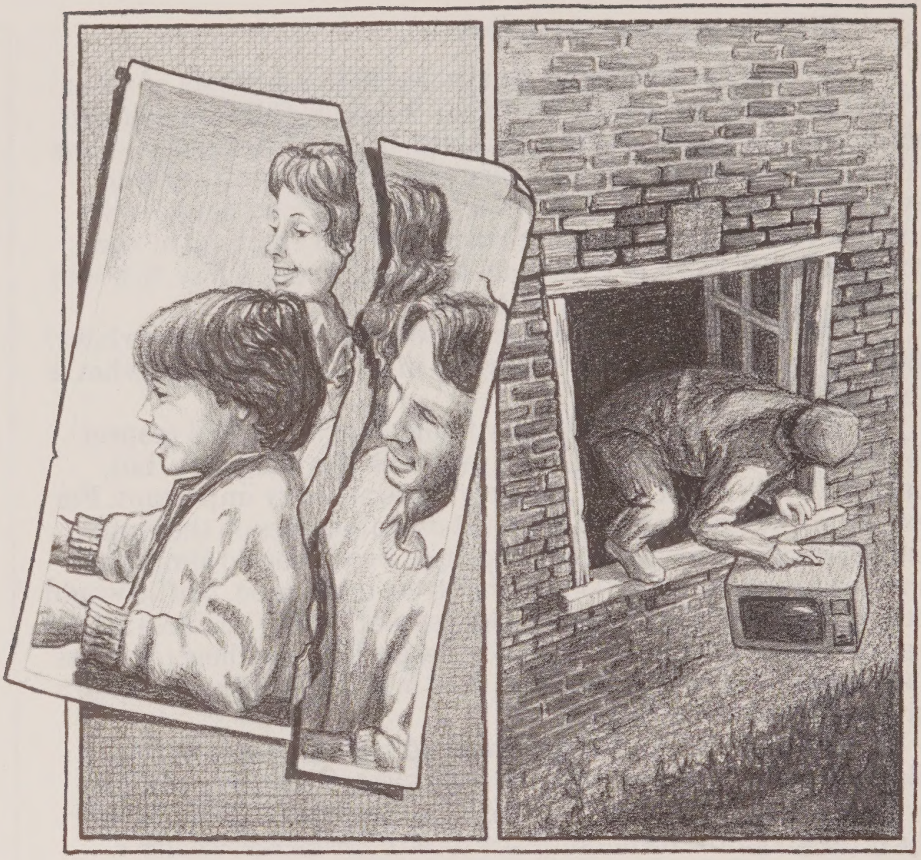
Almost everything we do is governed by some set of rules. There are rules for games, for social clubs, for children going to school and for adults in the workplace. Some of these rules — the rules made by governments — are called laws. Laws apply to everybody in society, and they may affect you whether you like them or not. And, unlike other rules, laws are enforced by the court; if you break a law you may be forced to pay a fine, to make restitution to someone, or to go to jail.

Why are some rules so special that they are made into laws? Why do we need rules that **everyone** must obey? In short, what is the purpose of law?

If we did not live in society founded upon mutual respect for each other's well-being, laws might be less necessary, but, because we do live in such a society, laws are very important. For example, the law says that we must drive our cars on the right-hand side of a two-way street. If people were allowed simply to choose at random which side of the street to drive on, traffic would be reduced to a deadly chaos. Laws regulating our business affairs help to ensure that we can count on people keeping their promises. Laws against criminal activities help to safeguard our personal property, and even our lives.

Of course, even in a well-ordered society people will have disagreements and disputes with each other. The law must also provide a way to resolve these disputes peacefully. If two people disagree about the ownership of a piece of property, we don't want them to fight it out in the streets. We turn to the law and to institutions like the courts to decide which side is right.

We need law, then, because we want a safe and peaceful society. But we expect even more from our law. Some totalitarian governments have very strict and rigid laws, enforced by very powerful police forces. This may provide a great deal of order, but in Canada we would not be satisfied with such a system of law. What we seek is a balanced system of legal rules which respect individual rights while, at the same time, ensuring that society operates in an orderly manner.



Civil law is used primarily to settle disputes between individuals, and deals with family law, property and business contracts. Public law deals with matters which affect society as a whole, such as criminal law.

Goals of the Law

In our society, laws are not designed only to govern our conduct. They are also expected to ensure that certain basic needs of our citizens are secured. This goal of the law is aimed at obtaining social justice.

Another goal of the law is fairness. This means that the law should recognize and protect certain basic rights and freedoms of each individual. Sacrificing our freedom and our rights is too high a price to pay for some kinds of "law and order".

We all want to achieve the perfect ideal of a just society — a society where every one is treated fairly and equally. The law helps us to work toward this goal by protecting members of society. Laws protect individuals against people or groups who try to take unfair advantage of them.

Modern societies are very complicated, and sometimes mistakes are made in the pursuit of solutions to social problems. But, even with the best intentions, laws are created that later on may be found unjust or unfair in their application. In a democratic society like Canada, we realize that such mistakes are possible and we can try to correct them. Because we have a democratic government, anyone who feels that a particular law is unjust has the right to try to change that law.

The System of Law and Justice

The law, then, is a set of rules for a society where basic rights and freedoms are protected, and every one is treated equally and fairly. These rules can be divided into two basic categories, according to the type of matter they deal with:

- **Public Law** deals with matters that affect society as a whole — matters such as criminal law, constitutional law or administrative law. For example, if someone breaks a criminal law, then it is a wrong against society and the state takes steps to prosecute the offender.
- **Civil Law**, on the other hand, is used primarily to settle private arguments or disputes between individuals. Civil law deals with such matters as business contracts, property ownership, and the rights and obligations of family members. When one individual "sues" another over some private dispute, this is a matter for civil law.

Of course, there is more to Canada's system of law and justice than just a set of rules. Laws have to be enforced, interpreted and applied in practice if they are to be effective, and the legal system includes a number of institutions to carry out these duties. For example, we have police forces to maintain law and order and to enforce the law. We have courts to interpret both civil and criminal law in specific cases. And we have a system of penalties to deal with those who fail to obey the law. Convicted criminals are punished by probation orders, fines or imprisonment. A debtor's house or salary may be seized if the terms of a contract are not met.

If we are to understand Canada's legal system, we need to look at the way law is applied in actual practice — what happens to a person accused of breaking the law, and what happens if that person is found guilty? But before we can deal with these questions, we need to look at a more fundamental issue. Where did we get this set of rules called "the law"?

The Source of our Laws

Historical Roots: Common Law and Le Droit Civil

The law in Canada derives from two legal traditions which are centuries old: common law and *le droit civil*. The common law tradition originated in medieval England, while **le droit civil** dates back even further, to ancient Rome. In Canada, the civil law of nine provinces is based on common law. Civil law in Quebec is based on *le droit civil*.

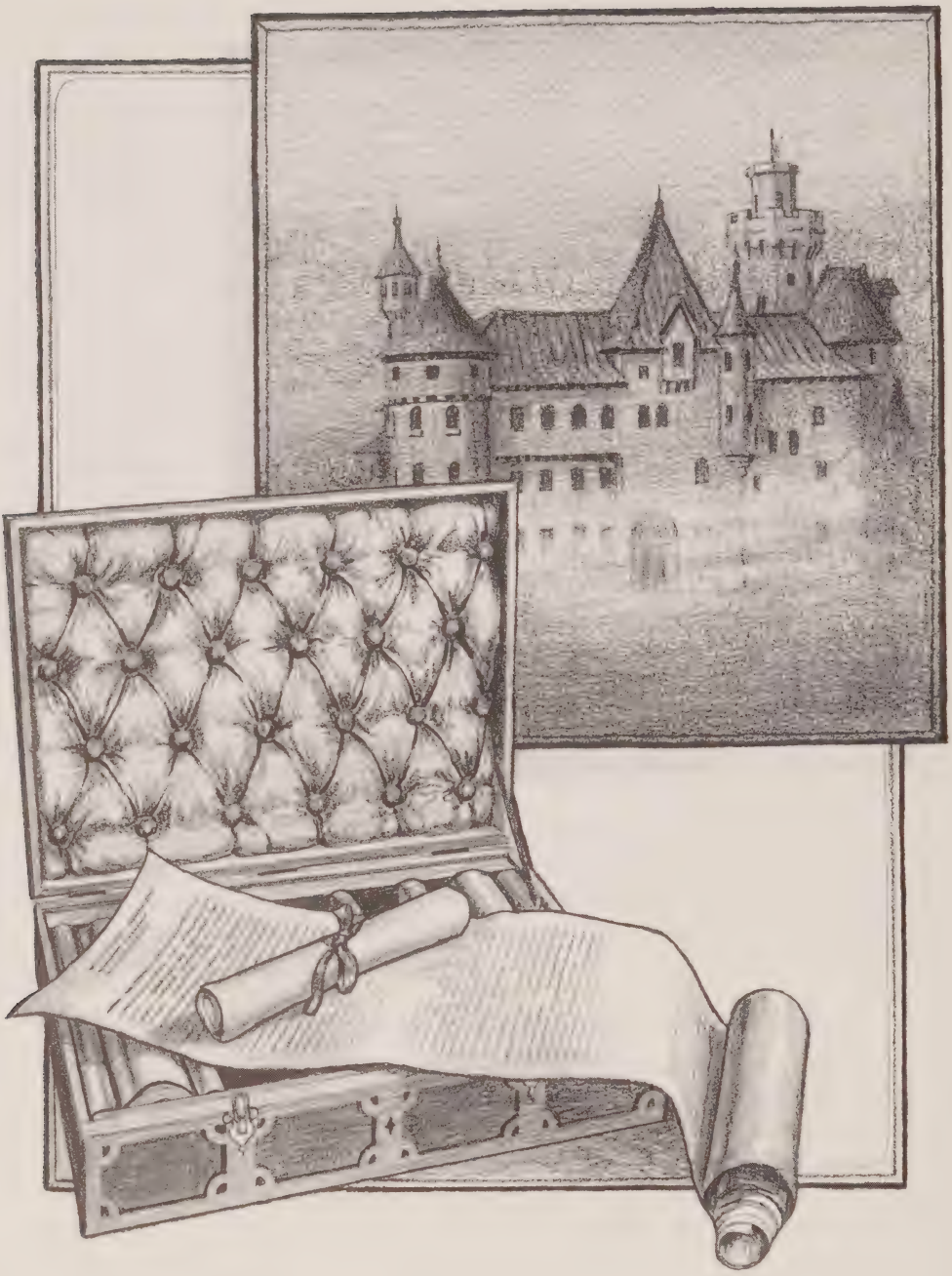
Traditionally, common law is a system of rules based on "precedent". Whenever a judge makes a decision that is to be legally enforced, this decision becomes a precedent — a rule that will guide judges in making decisions in similar cases. Many of our laws are made up of these precedents and customary practices which have developed over many years and adapted to changing circumstances.

The tradition of *le droit civil* is quite different. The Civil Code of Quebec is based on written legal codes that date back to the Byzantine Emperor Justinian. A Civil Code contains a comprehensive statement of rules, which list general principles of law. Unlike common law, when a court considers a case under *le droit civil*, it looks at a written civil code, and precedent is relied on to a somewhat lesser extent than under the common law. This is due to the guidance offered by the rules established in the Civil Code itself.

While the procedures used in common law are different from those used in *le droit civil*, the actual results are often similar. The courts' decisions in similar cases are very much the same under both the common law and *le droit civil*. It is only the method of reaching a decision that is different.

Making New Laws: Government Legislation

Much of our law, then, has been inherited from the two great Western legal traditions. However, we have found that as society grows and develops we cannot rely entirely on tradition. Sometimes we find that there is an urgent need for new laws or for old laws to be changed, and the common law may evolve too slowly to meet this need.



Our laws derive from two legal traditions: the common law which originated in medieval England and "le droit civil" which dates back to ancient Rome.

Governments can create new laws or change old laws by legislating "statute" law. When Parliament or a provincial legislature passes a statute law, it takes the place of any conflicting common law dealing with the same subject.

Making laws through legislation can be a rather complicated process. Suppose, for example, that the government wants to create a law that will help to control pollution. Government ministers or senior public servants would be asked to examine the problem carefully, and suggest ways that a law could deal with the problem of pollution. The proposed law must be drafted, and before it is presented to Parliament it must be approved by Cabinet — a group of Members of Parliament chosen by the Prime Minister to advise him. Members of Parliament must then study and debate the proposals. The proposals become law only if they are approved by a majority in both the House of Commons and the Senate and assented to by the Governor-General in the name of the Queen.

Because modern society is so complex and changes so quickly, more laws are made today than ever before. If our lawmakers had to deal with all of the details of all laws, it would be a nearly impossible task. To solve this problem, Parliament and provincial legislatures often pass laws that authorize the making of regulations that fill in the details in accordance with the intention of the lawmakers.

The Basic Framework: The Constitution

Governments and legislators cannot, however, make just any kind of law they want. There are rules about what kind of laws can be created, which governments can make certain kinds of laws, and about the limits of a government's authority.

These rules are contained in our Constitution. A "constitution" can be defined as the basic law of a country, for, as a general rule, it defines the system of law and justice. In Canada, the Constitution defines the nature of our governments, how these governments are elected, the rights and liberties guaranteed to each citizen, and the legislative powers of the federal and provincial governments.

One of the main documents of Canada's Constitution is the **Constitution Act, 1867** (formerly the **British North America Act**). This Act was passed by the British Parliament in 1867 to create the new nation of Canada made up of a federal government, as well as the governments of the provinces. But the power to change the Constitution remained with Britain, even though Canada had become an independent nation.

One hundred and fifteen years later, the British Parliament amended the Act for the last time by passing the **Constitution Act, 1982**. This gave Canadians the sole power over their own Constitution. In the future, Canada can deal with any changes that are needed. This "patriation" of the Constitution also gave Canadians their first constitutional Canadian Charter of Rights and Freedoms.

The **Constitution Act, 1867** sets out the basic principles of democratic government in Canada. It also defines the powers of the federal and provincial governments as well as the powers of the executive and legislatures.

The executive, usually called the Cabinet, consists, at the federal level, of the Prime Minister and a number of Ministers who are all answerable to the House of Commons for various governmental activities. As well, individual Ministers are responsible for various government departments such as the Department of Finance and the Department of Justice.

The legislature, at the federal level, is made up of members of the House of Commons and the Senate. Most laws in Canada are first examined and discussed by the Cabinet, then presented for debate and approval by a majority of members of the House of Commons and the Senate.

The **Constitution Act, 1867** also provides for a judiciary made up of the judges in our courts. Their job is to interpret and apply the law, and to give an impartial judgment in cases where there are disputes or conflicts.

One of the main documents of the Constitution is the Constitution Act, 1867 *— formerly called the British North America Act.*

The Federal System

Our Constitution defines a federal system of government for Canada. This means that the authority to make laws is divided between the Parliament of Canada and the provincial legislatures. Provinces make laws that come within their own jurisdiction and are effective within their own boundaries, while the federal government makes laws for the whole of Canada within its own jurisdiction. A number of other countries, such as Australia and the United States also have a federal system. Jurisdiction in those countries is divided between the federal government and the various states. By contrast, Great Britain does not have a federal system; its Parliament has sole authority to govern the entire country.

The Canadian Constitution gives the provinces authority to make laws concerning such matters as education, property and civil rights, the administration of justice, hospitals, municipalities and other matters of a local or private nature.

The federal government deals with issues concerning Canada as a whole, such as the regulation of trade and commerce, national defence, immigration, criminal law, patents, and the postal service. As well, the federal government has responsibilities over the Yukon and Northwest Territories.

With regard to our system of justice, the Parliament of Canada has exclusive authority over criminal law and procedure and has the power to set up national courts, such as the Supreme Court of Canada, the Federal Court and the Tax Court of Canada.

There also are local or municipal governments. They are created by the provinces and can make "by-laws" dealing with a variety of local matters such as parking regulations or issuing construction permits.

Thus, the laws in Canada are made on two different levels: provincial and federal. For example, the **Criminal Code**, a federal statute, applies to everyone in Canada. Highway traffic laws, on the other hand, are made by provincial governments and can vary from province to province.

The Canadian Charter of Rights and Freedoms

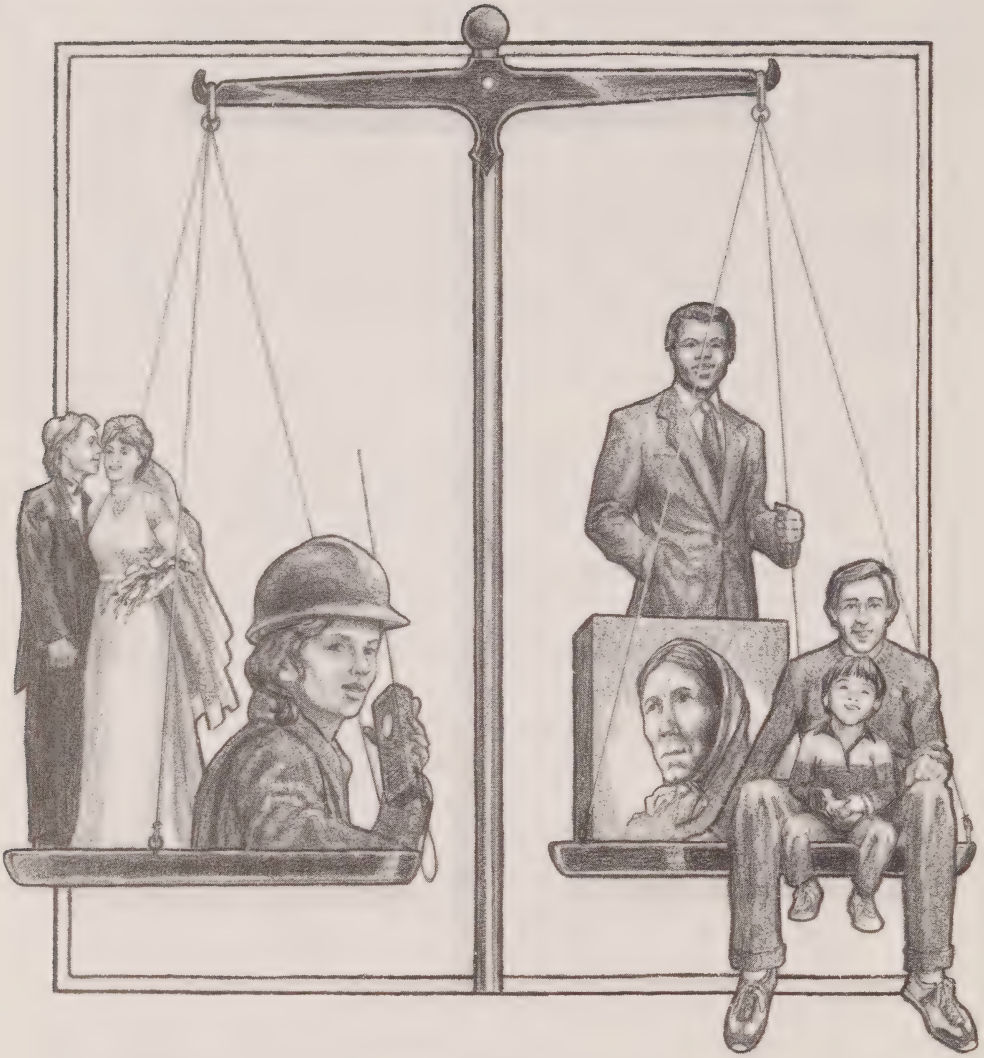
Aside from defining the kinds of laws that can be made by each level of government, the Constitution also limits the power of all governments by guaranteeing certain basic rights of individuals. All laws are now subject to the rights guaranteed by the Charter.

When the Constitution was "patriated" in 1982, the **Charter of Rights and Freedoms** became a fundamental part of our constitutional law. This means that an individual can ask the courts for help if he or she believes that basic rights are violated. Any law which is not consistent with the **Charter** may be declared invalid by the courts.

The **Charter** protects our rights and freedoms in the following areas:

- **Fundamental Freedoms** — these include the freedom of speech, freedom of religion, freedom of the press, and the freedom of peaceful assembly, and association.
- **Democratic Rights** — the right to vote in elections and to run for public office.
- **Mobility Rights** — the right to travel, to live or to seek work anywhere in Canada.
- **Language Rights** — the right to receive services from the federal government in either official language, English or French.
- **Equality** — protection against discrimination, including discrimination based on race, national or ethnic origin, religion, colour, sex, age, mental or physical disability (effective April, 1985). As well, a special clause in the Charter ensures that **all** rights in the Charter will be guaranteed equally to men and women.

Legal Rights — these include the right to consult a lawyer if you are arrested and to be informed of that right; to stand trial within a reasonable time; to be presumed innocent until proven guilty; to be protected against unreasonable searches, arbitrary imprisonment or cruel punishment. Every Canadian has the right to life, liberty and security of the person; no one can be deprived of these except in accordance with the principles of fundamental justice.



Our Constitution limits the power of all our governments by guaranteeing basic rights of all people in Canada, as set in the Canadian Charter of Rights and Freedoms.

While all of these rights are very important, they are not absolute; they can be limited in order to protect the rights of others. For instance, freedom of expression must be limited by laws against libel and slander. The rights set out in the **Charter** are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Thus, although the **Charter** sets out certain fundamental rights and freedoms, it also recognizes that these may come into conflict with one another and that some limitations upon rights may be necessary in a free and democratic society.

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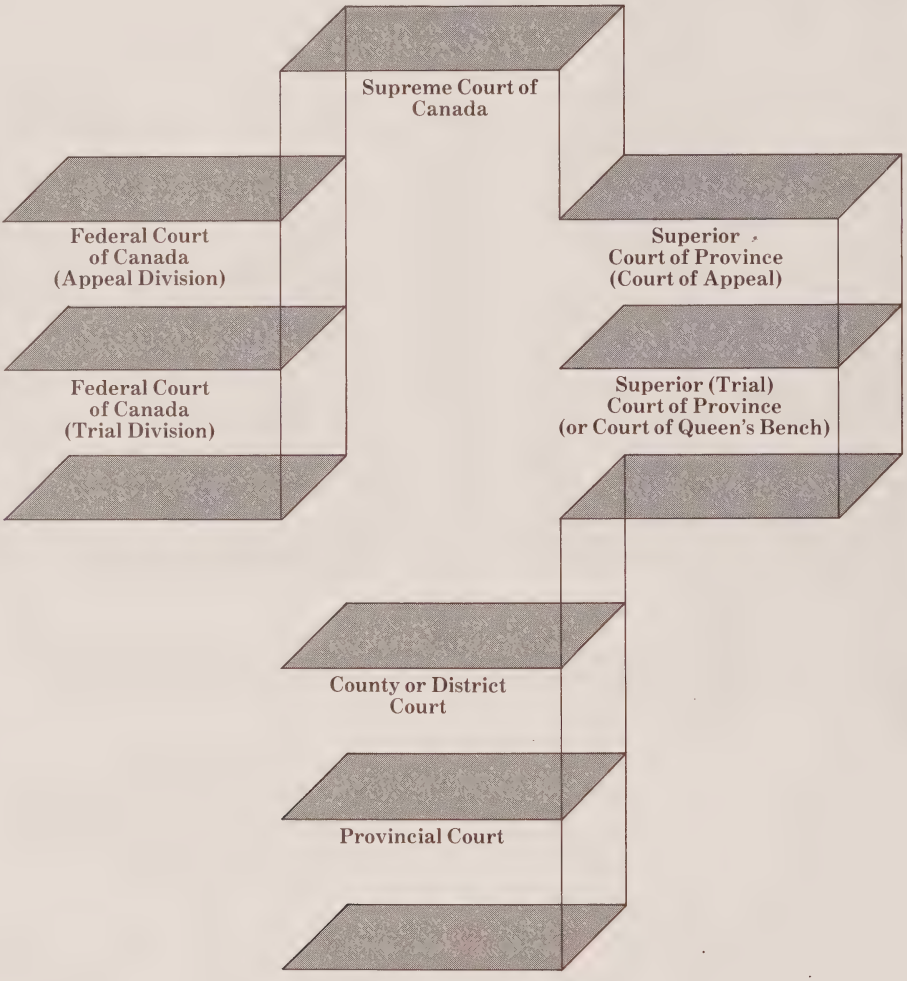
The Court Structure

It is important to remember that although the federal government is responsible for such matters as the Criminal Law, the provinces are responsible for the administration of justice and for law enforcement. Thus, each province sets up courts to administer justice and to interpret and apply federal and provincial laws. In addition, there are courts that are administered solely by the federal government.



The names of the courts are not the same in each province, but the court system is roughly the same across Canada. Basically, the provinces divide their court system into three levels. At the first level is the Provincial Court, which deals with most criminal offences, and Small Claims Courts, which hear civil cases involving limited amounts of money. This level may also include certain specialized courts such as Youth and Family Courts. Judges at this level are appointed by the provincial governments.

Some provinces have an intermediate level of courts, called the District or County Courts. The judges in these courts are appointed by the federal government. They deal with some criminal matters, hear appeals from the lower courts, and handle civil cases that involve amounts of money over the limit set for Small Claims Courts.

At the highest level in a province is the Superior Court, which may be a single court with a trial division and an appeal division, or two separate courts, the Court of Queen's Bench and the Court of Appeal. Judges in these courts are also appointed by the federal government. They deal with the most serious civil and criminal cases and have authority to grant divorces. A division of this Court or a separate Court of Appeal also hears appeals from all of the other courts in both civil and criminal law.

The Courts in Canada

Generally the courts deal with both "civil" and "criminal" matters. The level of court that hears a case is generally determined by how serious the case is.

The Federal Court of Canada has jurisdiction to deal with civil claims involving the federal government, as well as matters such as income tax, copyrights, and maritime law. It also reviews decisions of federally-appointed administrative tribunals, such as the Immigration Appeal Board and the National Parole Board. It has a trial division and a Court of Appeal.

The Supreme Court of Canada is the highest court of all. It hears appeals from decisions of courts of appeal; its judgment in a case is final. This court is usually called upon to decide important questions of interpretation concerning the Constitution and controversial areas of civil and criminal law. Decisions of the Courts of Appeal of the provinces and of the Federal Court of Appeal can be appealed further to the Supreme Court of Canada with the Court's permission.

Procedure in Civil Law

A civil court action, called a civil suit, arises when individuals or companies disagree on some matter, such as the terms of a business contract or the ownership of some piece of property. A civil suit may also occur because of some personal injury. For example, someone who suffers a broken leg when hit by a car may sue the driver for compensation. The person who sues is called the "plaintiff" and the person being sued is called the "defendant".

A civil suit begins when the plaintiff files a "statement of claim" which explains the complaint against the defendant. The court may then issue a "writ of summons". This orders the defendant to appear in court and present his or her side of the story. It is the defendant's responsibility to provide to the court a statement of defence. If the defendant fails to do so, he or she risks losing the suit by default.

When preparing a defence, the defendant may wish to consult a lawyer for advice and assistance. Lawyers representing each side will often discuss the problem out of court with a view to trying to settle the lawsuit before a trial is necessary. In fact, only about two percent of civil suits are actually tried before the courts.

If the dispute cannot be settled by negotiation, each party is entitled to a pre-trial session with the opposing party known as an "examination for discovery". This session is intended to clarify the complaint against the defendant, and to permit each side to examine the evidence that will be used in court by the other side.

After the examination for discovery, the dispute will proceed to the trial stage. During the trial it is up to the plaintiff to prove the facts necessary to support the claim against the defendant.

The Criminal Prosecution

Unlike a civil suit, a crime is not simply a dispute between individuals. A crime is considered an offence against society as a whole. This is why it is usually the state, and not an individual, who initiates a criminal prosecution.

Anyone accused of a crime has the right to stand trial as soon as possible.

Criminal offences are divided into three categories. A person charged with a "summary conviction" offence will appear before a provincial court judge, and the trial will normally proceed "summarily", that is, without delay. The maximum penalty for this type of offence is a $2,000 fine, six months in prison, or both. "Indictable" offences are usually more serious, and in many cases the accused person may choose to be tried by a provincial court judge, by a judge in a higher court, or by a judge in a higher court and jury. Dual procedure offences are ones where either the summary conviction or the indictment procedure may be used.

A person may be accused of a crime without being arrested by the police. The accused may simply receive a summons after a charge has been laid before the court. A summons is an order to appear in court at a certain time to answer to the charge. But if the accused is arrested, there are certain procedures that must be followed to protect his or her rights. It must always be remembered that an accused person is guaranteed fair procedure by the Constitution, and that anyone charged with a crime is presumed innocent until proven guilty.

When the police arrest or detain someone, they must tell the accused that he or she has the right to consult a lawyer without delay. They must also explain the reasons for the arrest and the specific charge that is being made.

Anyone who is arrested has the right to have a bail hearing as soon as possible (usually within twenty-four hours). An accused may be released from custody after promising to appear in court when required. A sum of money may have to be deposited as a guarantee that the accused will appear in court. Bail will only be refused if there are very good reasons for doing so.

Anyone accused of a crime also has the right to stand trial as soon as possible. If the charge is for an indictable offence, there may first be a "preliminary hearing". During the preliminary hearing a judge examines the case to decide if there is enough evidence to proceed with the prosecution. If the judge decides there is not enough evidence, the case will be dismissed. Otherwise, a full trial will be arranged.

In a criminal trial, the judge or jury must decide upon the evidence presented in court.

How a Case is Tried

The trial procedure is basically the same in both criminal and civil law. The trial is a method for deciding the facts of the case: in a criminal trial, whether the accused is guilty, and in a civil trial whether the plaintiff is justified in his or her complaint. However, in a criminal trial the prosecutor has a special obligation to ensure, not only that all the facts are before the court, but that the trial is conducted in a manner which is fair to the accused.

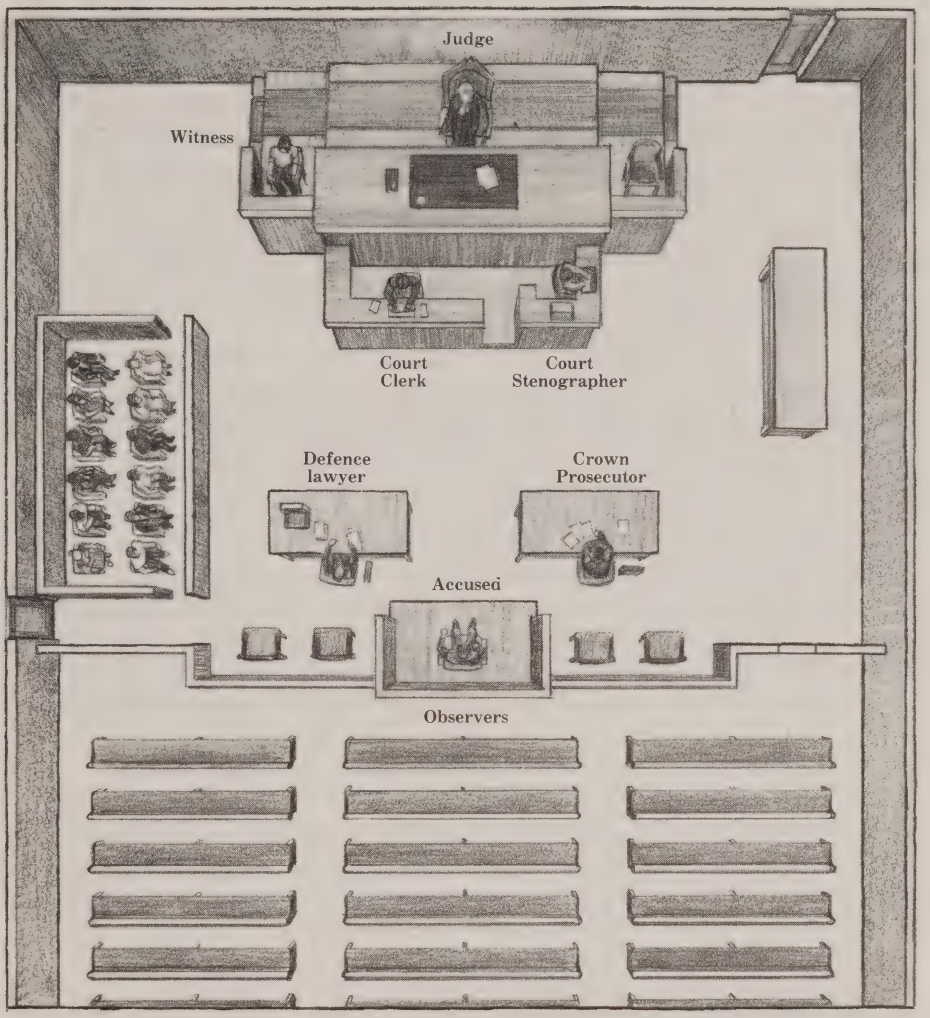
The trial begins with the prosecution (or the plaintiff) presenting the evidence against the accused or defendant. The prosecution may call upon witnesses to answer questions, seeking to bring out all of the evidence relating to the charge. The accused or defendant's lawyer may cross-examine these witnesses to try to clarify their evidence or to show that their testimony is not conclusive.

Then it is the accused or defendant's turn to present his or her side of the story if they wish. The defendant may decide to "take the stand" and testify, but he or she is not required to do so. The defence may also call upon witnesses, who may be cross-examined by the prosecution or plaintiff.

Throughout the trial the judge makes sure that all of the evidence presented and all of the questions asked are relevant to the case. They must also be fair to both sides of the dispute. There are very strict rules of evidence that must be followed. For example, the **Canadian Charter of Rights and Freedoms** requires that a judge refuse to accept any evidence that was obtained in a way that violates a person's basic rights, if to do so would bring the administration of justice into disrepute.

At the conclusion of the trial, both the prosecution or plaintiff and the defence present a summary of their arguments. The judge must then consider the evidence presented and make a decision.

In more serious criminal and civil trials, the accused or defendant may ask to be tried by a jury. In this case the procedure is the same, but it is the jury that must make the decision. The judge will explain the evidence and the relevant laws to the jury. The jury must then consider the matter and reach a verdict.



Traditional common law court setting

The main roles in criminal courts are played by the judge, prosecutor on Crown Counsel, defence counsel, witnesses and the jury. The clerk assists in the administration of the trial and the stenographer records all proceedings. The accused is present throughout the proceedings and may wish to testify, but he or she is not required to do so.

The Decision of the Court

After the facts of the case have been decided in the trial, the judge must act as follows: If the plaintiff in a civil suit has not justified his or her claim, the judge will dismiss the case. If the accused in a criminal trial is found not guilty, the judge will acquit the defendant.

But if the plaintiff has won the civil suit, the judge and, in some cases, the jury must decide what action to take. And if the person accused of a crime is found guilty, the judge must decide upon an appropriate sentence.

When a plaintiff wins a civil suit, he or she is usually awarded damages. This means that the defendant must pay the plaintiff a certain amount of money decided by the judge or jury. When making this decision, the judge or jury will take into consideration the amount of money demanded by the plaintiff in the statement of claim; but the award may not be necessarily for the full amount asked for. If the plaintiff is asking for compensation for loss caused by the defendant — for example, in an automobile accident or through an improper business transaction — the judge or jury will usually base the award on the actual loss suffered. Occasionally, the judge or jury may also award "punitive" damages, where the defendant must pay money as a penalty for his or her wrongful act.

In some civil cases the judge may issue an "injunction". An injunction is an order for the defendant to stop doing something — such as burning rubbish on his or her property or annoying his or her neighbour. The judge can also order what is called a "specific performance". For example, suppose that the defendant, Mr. Jones, has broken his contract to sell his house to the plaintiff, Mrs. Smith. The judge could order Mr. Jones to honour his contract and sell the house to Mrs. Smith at the agreed price.

When a person is found guilty of a crime, the judge must decide what sentence should be imposed upon the offender. When making this decision, the judge must consider many things — such as the seriousness of the crime, the need to prevent or deter the offender or others from committing another crime, as well as the sentence that is provided for in the law itself.

There are many different kinds of sentences that the judge may give, and he or she may decide to use a combination of different penalties. The sentence may include such penalties as:

- **Fines**, running up to many thousands of dollars.
- **Restitution**, to return property illegally obtained or to compensate for losses caused by the crime.
- **Probation**, releasing the offender on the condition that he or she obeys certain rules. The judge may, for example, order the offender to perform "volunteer" work in the community.
- **Imprisonment**, in either a reformatory or a jail. An offender who is sentenced to two years or more in prison will be sent to a federal penitentiary.

The judge is not, however, always required by law to impose a sentence. For example, if the offence was not serious and the offender has no previous convictions, the judge may feel that he or she does not deserve a criminal record. In this case the judge can give the offender a "discharge". If it is a "conditional" discharge, the offender must obey the conditions imposed by the judge; otherwise, he or she can be brought back to court and given a more severe sentence.

The Right to Appeal

No system is ever "foolproof". Despite all the precautions, it is always possible that a judge or jury may make a mistake. Thus, the right to appeal a court's decision is an important safeguard in our legal system.

In most civil and criminal cases a decision made at one level of the court system can be appealed to a higher level. This means that the higher court is asked to review the case. The court may either affirm or reverse the first decision or order a new trial. Both sides in a civil dispute may make such an appeal; and either the accused or the prosecution in a criminal case may appeal a decision they feel is unjust. Sometimes it is just the sentence that is appealed — an accused may ask a higher court to reduce a sentence; the prosecution may also ask to have the sentence increased.

If you want to know how the law applies to a specific problem, you should consult a lawyer.

Administrative Boards and Tribunals

There are many "administrative" rules and regulations that are often dealt with outside of the formal trial procedures described above. Disputes concerning such matters as broadcasting licenses, unemployment insurance, occupational safety standards or health regulations may be placed in the hands of government departments or left with special administrative boards. These include such institutions as the Unemployment Insurance Commission, the Canadian Radio-Television and Telecommunications Commission and labour relations boards.

The procedure before these administrative bodies is usually simpler and cheaper than in formal trials. However, to ensure that such bodies exercise only the authority conferred upon them by law and that their procedures are fair, their decisions and proceedings may be reviewed by the courts. In the case of federal boards, this review is done by the Federal Court of Canada.

Getting Legal Advice

When someone runs into legal problems, expert legal advice may be important. After many years of education and training, lawyers are qualified to give this advice. (In Quebec, notaries may advise on non-contentious matters.) Lawyers represent their clients in both civil and criminal trials. In addition, they give help and advice to their clients in any situation where knowledge of the law is necessary, such as buying or selling a house.

The advice of a lawyer is especially important to someone accused of a crime, because a conviction can have very serious consequences. However, an accused person may not be able to pay for the services of a lawyer. To solve this problem the federal and provincial governments have set up a program to share the cost of legal services for those who need such assistance. Under this agreement, the provinces offer legal aid to any financially eligible person who is accused of a crime, when a conviction might mean a jail sentence or loss of livelihood. Some provinces also offer legal aid for civil cases.

It is important for people to understand that they themselves are a part of the system of justice, and that justice is not solely the business of police, lawyers, judges and lawmakers. There are a number of roles in the justice system that must be played by individual citizens if the law is to work and justice is to be done.

Jury Duty

Although most cases in Canada are tried by judges without a jury, the Canadian Charter of Rights and Freedoms states that any citizen who is charged with a criminal offence for which there can be a prison sentence of five years or more has the constitutional right to a trial by jury. In some cases, a person who is charged with a criminal offence for which there can be a prison sentence of less than five years may also have a right to choose a trial by jury.

The jury is one of the oldest institutions of our criminal justice system. It entitles those who have been charged with a criminal offence to be tried by a group of fellow citizens. In Canada, a jury is made up of 12 citizens (there may be only six in the Yukon and Northwest Territories), who have been selected from among citizens of the province or territory in which the court is located. The precise method of selecting citizens for jury duty is determined by the laws of the various provinces. Generally, the qualifications for jury duty are Canadian citizenship and age of majority.

When a citizen is called for jury duty, he or she is obliged to attend unless excused by the laws of the province. Attendance for jury duty means that a citizen may have to re-arrange his or her personal affairs for a period of time.

Because a person is called for jury duty does not mean that he or she will necessarily be selected in court to serve on a particular jury. The names of all those called for jury duty are placed on individual cards in a box, shaken up, and pulled from the box one at a time. Either the prosecutor or the defence counsel may object to the choice of a particular juror if they believe there is a reason why he or she should be disqualified.

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In the course of the trial, jurors must not allow themselves to be influenced by anything except the evidence presented in the court. They have to make up their own minds about the accuracy or honesty of the testimony given by witnesses in the trial. Finally, when both sides have presented their case and the judge has instructed the jury on what they must take into account when making their decision, the jurors meet by themselves in a room outside the courtroom to decide whether the prosecution has proven, beyond a reasonable doubt, that the accused person is guilty.

Regardless of what verdict the jury renders, it must be unanimous. That is, they must all agree on the verdict. If they cannot agree, the jury must then inform the court that they cannot reach a unanimous verdict. The judge must then decide what course of action to take, but in any event he must then "discharge" the jury, freeing the jurors from further duties. After the trial, no juror is permitted to inform others about the discussions that took place in the jury room.

(Juries may also be used in civil trials. However, the rules and procedures for civil trials may be different in each province.)

Testifying in Court

A citizen may also be called to give evidence in a civil or criminal trial, because he or she has information which the court finds useful. For example, even if someone were not a witness to the offence, he or she may know something or have a document which either side thinks will assist their case. A citizen may also be called as an expert witness — that is, as someone whose knowledge about a particular subject can help the court to obtain answers to technical questions.

Usually, citizens come forward voluntarily when they have information which they believe is related to the case. At other times, an individual may be summoned by subpoena by the court to give evidence, regardless of whether he or she volunteered. In either case, the prosecution, plaintiff or the defence wish to call that person as a witness in the trial, the witness must attend. It is a duty of all citizens to testify in court when required to do so. The court may penalize those persons who wilfully disobey an order of the court.

Testifying in court is essential to making our system of justice work.

Witness' testimony is taken under oath or by affirmation and they are required to answer the questions asked, unless the judge decides that a question need not be answered. Testifying in court is essential to making Canada's system of justice work as it should.

Knowing the Law

Citizens do not have to be experts in the law. That is the responsibility of lawyers. But since our laws are publicly debated before being passed in Parliament, citizens are expected to know what is permitted and what is not permitted. **Under our system of law, a person charged with an offence cannot be excused just by claiming that he or she didn't know they were breaking the law.**

Knowing the law requires that citizens take reasonable steps to be sure they are acting legally. Information is available from federal and provincial government offices and from the police. If, after consulting these sources of information, a citizen is still uncertain about the law, then a lawyer should be consulted.

The Future of Law in Canada

A Changing Society

Our legal system provides a unique and valuable framework for Canadian society. It is based on the essential principles of the rule of law, of freedom under the law, and respect for our democratic rights. Our tradition of law and justice is an important heritage for every Canadian. As society changes, we must make sure that this tradition can meet the challenge of the future.

We live in a world where change is taken for granted. Every day we hear about new types of technology — robots in the factory, experiments in space travel, computers in the home. Twenty years ago computers were considered odd and exotic — today they are so much a part of our everyday life that children learn to use them in school. Twenty years ago the moral questions that concern us today were seldom mentioned in public — today they are hotly debated in the newspapers and on television. We are becoming more and more aware of the complicated effects of technology on our environment, and of the immense threat of pollution and industrial wastes. People are changing their attitudes towards many things and towards society itself.

Changing the Law

As people change the way they live and work, the assumptions of our legal system may have to change. Old laws may become out of date, or new situations may arise which are not dealt with by any existing law. For example, recent developments in computer technology are making it easier for one company to "steal" information from the computers of another company. But when legislators made our laws against theft, they could not foresee such a development. It may be necessary to make new laws which account for the new world of the computer.

We may need more than new laws in the future. We may need to change the system of law and justice itself. For example, many people believe that our trial system is out of date. They argue that it is too slow and expensive to deal with today's problems; more informal procedures that encourage people to cooperate in settling disputes are needed.

Others argue that our legal system concentrates on punishing those who break the law, but forgets the victims of crime. Many people believe that the legal system must be reorganized so that it treats victims more fairly.

Many other issues are being discussed and debated today. Does our legal system discriminate against women? Should Native Canadians have the right to design their own laws? Do children have special rights when their parents divorce? It is clear that the future will bring many changes in our law.

The People's Law

The law must continue to grow and develop in a changing society. But how do we decide what changes are necessary?

The federal government and many of the provinces have set up law reform commissions. These commissions play an important role in examining our laws and recommending improvements.

But the responsibility for changing our laws can not be left to commissions, lawyers, or even government officials alone. In a democratic society it is the people who must finally decide what they want from their law. The law belongs to people, and it is intended to serve the people of Canada. Ultimately the people — each one of us — must help to define the kind of law and justice we have in Canada.

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